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NOMINATION OF JAMES R. CURTISS

HEARING

BEFORE THE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

SECOND SESSION

ON THE

NOMINATION OF JAMES R. CURTISS TO BE A MEMBER OF THE NUCLEAR REGULATORY COMMISSION

SEPTEMBER 13, 1988

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CONTENTS

OPENING STATEMENTS

	Page
Breaux, Hon. John B., U.S. Senator from the State of Louisiana	4
Burdick, Hon. Quentin N., U.S. Senator from the State of North Dakota	1
Durenberger, Hon. Dave, U.S. Senator from the State of Minnesota	8
Reid, Hon. Harry, U.S. Senator from the State of Nevada	7
Simpson, Hon. Alan K., U.S. Senator from the State of Wyoming	2
Stafford, Hon. Robert T., U.S. Senator from the State of Vermont	9
Symms, Hon. Steve, U.S. Senator from the State of Idaho	7

WITNESS

Curtiss, James R., nominated to be a member of the Nuclear Regulatory Commission	5
Responses to:	
Committee questionnaire	15
Additional questions from:	
Senator Burdick	22
Senator Stafford	31
Senator Moynihan	32

NOMINATION OF JAMES R. CURTISS

TUESDAY, SEPTEMBER 13, 1988

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
Washington, DC.

The committee met, pursuant to notice, at 10:06 a.m., in room 406, Dirksen Senate Office Building, Hon. Quentin N. Burdick (chairman of the committee) presiding.

Present: Senators Burdick, Moynihan, Simpson, Pressler, Symms, Breaux, Durenberger, Reid, Stafford, and Baucus.

OPENING STATEMENT OF HON. QUENTIN N. BURDICK, U.S. SENATOR FROM THE STATE OF NORTH DAKOTA

Senator BURDICK. Good morning. The Committee on Environment and Public Works is meeting today to hear testimony on the nomination of James R. Curtiss to be a member of the Nuclear Regulatory Commission. Mr. Curtiss was nominated on August 11th.

Before we begin, Mr. Curtiss, I understand that your wife Gayle is here today. Perhaps you would like to introduce her to the committee.

Mrs. Curtiss, the committee welcomes you.

Jim has been a member of the committee staff since 1981. He has performed admirably in his service to Senator Simpson and the committee. His knowledge of the law of nuclear regulation is extensive and detailed. It is also an important and grave responsibility.

The Commission is charged with protecting the public health and safety with respect to the commercial use of nuclear materials. If nuclear power is to make a contribution to our energy security, it must be done in a safe and an environmentally acceptable manner. The Commission's job is to ensure this. This is not an easy task; it is difficult, controversial, and challenging.

Jim has struggled with these issues for the committee. He is no stranger to the controversy, the emotion, and the importance to the public of nuclear regulation. If confirmed, he will bring an important legal perspective to the Commission.

Jim also spent many long hours assisting in the committee's investigation into NRC's structure and operations. Based on this investigation the committee made several recommendations as to how the Commission could improve its regulatory process. The major recommendation was for more public decisions.

I hope that if confirmed, he will strive to make the Commission's decisionmaking process more available to the public and he will strive to ensure that the Commission maintains its independence.

Senator Stafford is not present at the moment, so Senator Simpson, would you like to make the introduction?

OPENING STATEMENT OF HON. ALAN K. SIMPSON, U.S. SENATOR FROM THE STATE OF WYOMING

Senator SIMPSON. Mr. Chairman, I thank you very much. If I might just make some brief remarks from this position in the hearing room rather than there on the bench as usual with you.

I am very pleased and very proud that President Reagan has nominated Jim Curtiss to the Nuclear Regulatory Commission. The President has nominated a remarkable young man. I have come to know him well, an individual of extraordinary intellect, integrity, and commitment. I know that Senators Moynihan and Breaux have worked with him; we do get to know people who we refer to as "staffers" and we get to know them well. We know their philosophies, their propensities, their habits, their skills, but I think that all of us would agree that the President has nominated someone highly qualified to serve on the Nuclear Regulatory Commission, a very fine choice.

I won't spend any time in the background of his skills and his graduation from law school, but he worked on the staff of the NRC from 1979 to 1981. It was in February of 1981 that I came to know him. He worked for me and he worked with Jim Asselstine, you will recall, who worked for the committee. It was ironic that at the time when Jim Asselstine went on the NRC, someone actually questioned his connections to the industry. We remember that. We all know how that one worked out. He proved to be a very independent and thoughtful man. He worked for the committee, and of course, Jim is the same.

During the time that he had served me when I was chairman of the subcommittee, and now as ranking member of the Subcommittee on Nuclear Regulation, he served with great distinction. He served me on this committee and worked through so many important pieces of legislation regarding commercial nuclear power. Those laws are on the books with Jim's contribution stamped all over them. I think of the Nuclear Waste Policy Act of 1982, the Low Level Waste Act of 1985, and this year Price-Anderson, and just a few weeks ago the Senate passed the NRC reform bill.

I think, Mr. Chairman, any one of us who worked on nuclear regulatory legislation knows that it doesn't get done without tremendous effort because it is an arena just stuffed with emotion and fear and all the things that make it so tough to deal with. It has to be done with a yeoman effort and it has to be done with a bipartisan effort. I have watched Jim work with Senator Breaux' counsel, Tim Smith, who has gone on to other activities. I have watched him work with others on both sides of the aisle, and all of those pieces of legislation I just ticked off involved most thoughtful compromises and negotiations and consensus.

So this is Jim Curtiss. I have a very great deal of respect for this man. He is a true technician. He is not a partisan. He is what I would call the ideal definition of staff, if it could be defined. I have watched him work; he is an indefatigable worker, so bright and so skilled.

He is a consummate professional. He is a detail man. He understands the issues. And one other thing he is which is sometimes missed in this arena, he is very thoughtful and kind to other people that he deals with on staff. He has never made anyone feel lesser in his work, and yet he possesses an overpowering knowledge of his subject matter. I've never seen him arrogant, never rude. I don't say that that always occurs in this arena with regard to staff persons. He is a fine human being.

With regard to his nomination, I did have a mild chuckle about Jim Curtiss working so darned hard on the legislation that would eliminate the job that he has just been nominated to, because he has been the right hemisphere of my brain for years as we worked on the Single Administrator bill.

So here now, he is presented in nomination. Still, I don't think that can be any kind of a conflict of interest when you're out to knock off the position to which you have been nominated, but it says a lot about Jim, about his commitment to responsible nuclear legislation, that he's willing to put it right on the line with this nomination.

He remains very committed to the regulation of commercial nuclear power in a way that ensures the public health and safety, and that's the only mission of the entire NRC. He believes in a process that yields results. He always seeks consensus on the tough issues, and boy, does he know how to work. I can't imagine how there could be a finer appointment and the changes he could make in the NRC with regard to—especially if it remains in its present context of five collegial persons, then they need someone like this there.

So I support his nomination without hesitation. Jim's wife Gayle is here today; I have come to know her, a very lovely and bright lady, and their young daughter, Alexandra. They are a delightful family.

So if all goes as I hope it would, I shall miss him greatly, but he will serve this Nation with great distinction. I thank you for allowing me to come and make these remarks about a very fine person.

Mr. Chairman, I would be glad to respond to any questions, but Secretary Shultz is testifying on refugee matters before a subcommittee on which I am also ranking at this same time, and I must return there.

Senator BURDICK. Senator Moynihan.

Senator MOYNIHAN. Mr. Chairman, before Senator Simpson goes may I associate myself with everything that he has said about Mr. Curtiss? I have possibly a slight reservation about his being a technician. I think I preferred your phrase that he is a consummate professional. He has served this staff as an attorney. He came from the NRC; he has been in every way an admirable associate, and we are proud that he should be put up in these circumstances. He knows that he and I don't agree about some things; that's why there is what's called a profession of the bar. People do not always agree. But no one has ever earned this Senator's respect more than he has done, and I would like the Senator from Wyoming to know that.

Thank you.

Senator SIMPSON. I thank you very much, Pat, because you and I have worked together for nearly 10 years now. You know the re-

spect that I have for you and you and I have seen some remarkable staff people on this committee and the subcommittees. I know some of those who have worked with you and you know some who have worked with me, and I do appreciate those remarks indeed.

Senator BURDICK. Senator Breaux.

Senator BREAUX. Thank you very much. I have no questions of Senator Simpson, my colleague on the Nuclear Regulatory Subcommittee, but I would like to make some comments about the nominee before he makes his comments. I don't want to keep Senator Simpson because I have no questions of my ranking member.

Senator SIMPSON. I thank the Senator for not asking me any questions.

Senator BREAUX. May I go ahead and do it now?

Senator BURDICK. You may.

OPENING STATEMENT OF HON. JOHN B. BREAUX, U.S. SENATOR FROM THE STATE OF LOUISIANA

Senator BREAUX. Thank you very much, Mr. Chairman. I, too, would like to join with Senator Simpson in welcoming our colleague from the professional staff standpoint, Jim Curtiss, to the committee to present his statement on his nomination by President Reagan.

Fred Bernthal, as we know, was the NRC Commissioner who resigned on July 1st, and this nominee, Jim Curtiss, is being submitted to the Senate to replace Fred Bernthal. His nomination was received by the Senate on August 11th, and the process now goes to the hearing stage for consideration.

I am always impressed by those who consider nominees to be either pronuclear or antinuclear, and the pronuclear people want someone who is pronuclear and the antinuclear people would like to see someone appointed who is antinuclear. I can tell you that Jim Curtiss is neither. He is pro-professional, and I think that's the type of nominee that we should favorably consider. He is neither pro-Shoreham nor is he anti-Shoreham. He is neither pro-Seabrook nor anti-Seabrook. He has been a pro-professional in the consideration of all of those controversial and touchy political issues.

Political decisions are our decisions. They are not the staff's decisions, and never have I seen Jim Curtiss trying to advocate a position on these controversial matters. He has advocated to us considering the facts and making our judgments based on our political sensitivity to the issues and the needs of the people.

So I would say that we have a supremely qualified professional being considered for this position. I remember quite well his work on Price-Anderson, a piece of legislation that the nuclear industry strongly supported, and this committee produced a product that I think is a good one. I also remember equally his work on the single Administrator for the NRC, legislation that in general the nuclear industry is opposed to. So you can see the product of his work with this committee on issues that the nuclear industry supports and his work on those issues that the nuclear industry strongly opposes. You can't ask much more than that of a professional staff person than to keep the Members informed and to do outstanding staff work.

I noticed that we have three colleagues from New York in the House who sent out a press release—the letterhead is from Congressman George Hochbrueckner of New York—suggesting that we should not favor this nominee because Vice President Bush came out for Shoreham, and the NRC administration approved an evacuation plan for Shoreham. That has nothing to do with the qualifications of this nominee. His qualifications, his background, his expertise should be the issue, not whether the Vice President is for Shoreham or against Shoreham, or whether FEMA and the NRC approve an evacuation plan or not. His position on these issues is not what we should be examining.

Having known his background and his record, I strongly support him. I support the President's nomination of him and urge that we complete the process. Thank you.

Senator BURDICK. Senator Pressler.

Senator PRESSLER. I join in the various remarks.

Senator BURDICK. Mr. Curtiss, please come to the table. Welcome to the committee.

You have a statement which will be received in full.

STATEMENT OF JAMES R. CURTISS, NOMINATED TO BE A MEMBER OF THE NUCLEAR REGULATORY COMMISSION

Mr. CURTISS. Mr. Chairman, I am most grateful for everyone's kind remarks. I am especially grateful that Senator Simpson was so kind as to be here to introduce me. I certainly hope that if confirmed, I can continue to earn the committee's trust and confidence.

Mr. Chairman, it is a privilege and an honor for me to appear before you and the other members of the committee today as the President's nominee to become a member of the Nuclear Regulatory Commission.

In view of Senator Simpson's review of my background I will just briefly summarize my professional training and experience.

I am an attorney by training, having graduated from the University of Nebraska College of Law in 1979. Upon graduation I began what has turned out to be a career devoted exclusively to matters involving the regulation of the commercial nuclear power industry.

In this capacity I have had the opportunity to become familiar with many of the policy issues concerning the regulation of nuclear power that have arisen over the past decade as well as, in a more general way, those issues that will most likely come before the agency in the next few years. Based upon my experience to date it would be my hope that, if confirmed, I will be able to bring to the Commission's deliberations and decisions a perspective that will contribute to reaching sound decisions in the oftentimes controversial matters with which the Commission must deal.

While I do not profess to be familiar with all of the issues that currently confront the NRC, it does seem, to me that there are a number of challenges that will face the agency over the next few years as it strives to fulfill its sole statutory mandate, to ensure that the use of nuclear materials and facilities is undertaken in a manner that protects the public health and safety and the environment.

As a general observation, it is essential in my view that the agency strive to engender a high degree of public confidence in the agency as an institution and in the regulatory actions taken by the agency. The American public has, and will continue to have, a great interest in the regulation of nuclear power, whether it be in the communities surrounding nuclear power plants, in the States through which nuclear materials are transported, or as a result of any of the numerous other activities that the NRC regulates. And in view of this, it seems to me to be especially important that the agency seek to ensure that its decision-making process is conducted in an open and accessible manner and that the decisions rendered by the agency are based upon sound technical information.

Beyond this, there are three specific areas where, in my judgment, the agency will face important challenges over the next several years. First and foremost, we now have approximately 110 operating nuclear power plants, generating roughly 16 percent of this Nation's electricity. In my view the oversight and regulation of these 110 plants should continue to be the agency's top priority. In particular, there are a number of issues that will become increasingly important as the nuclear industry continues to mature, including maintenance, plant aging, and human factors issues.

Second, the agency is devoting increasing attention to a wide range of issues regarding the so-called "back end" of the fuel cycle, including, most prominently, the disposal of high- and low-level nuclear waste. With increasing attention focusing on the issue of nuclear waste disposal and with the quantities of both high- and low-level nuclear waste accumulating daily, the Commission's role in this area is becoming increasingly important and I anticipate that this area in particular is one where the Commission will be spending a greater share of its time and resources.

Third and finally, as the country looks to possible future generations of nuclear power plants, it seems to me that the agency has an opportunity at this point in time to ensure that the regulatory program for any such future plant is clearly articulated and, to the extent possible, to do so in advance of any future application. Positive steps have already been taken by the Commission to begin to define the procedures for consideration and approval of standardized nuclear power plant designs. In this context, together with other related regulatory initiatives, the agency has an unusual opportunity to address the various questions that might arise for the next generation of nuclear plants in a prospective manner and thereby avoid many of the difficulties and uncertainties that we have faced in the past.

Those three issues, Mr. Chairman, are among the most important of what I consider to be the agency's many challenges over the next few years. There are certainly others, but the challenges in these three areas—together with the agency's continuing efforts to engender public confidence in the agency's regulation of the nuclear power industry—are, in my judgment, the most critical challenges that will come before this agency in the near future.

In conclusion, Mr. Chairman, I welcome the opportunity, if confirmed, to serve as a Commissioner of the NRC. At this point I would be willing to answer any questions that the committee might have.

Senator BURDICK. Before we go into questions, several of our colleagues have entered the committee room. I would ask them if they care to make opening statements.

Senator SYMMS. Mr. Chairman, I would, but I don't want to precede any of my colleagues.

Senator BURDICK. Proceed.

OPENING STATEMENT OF HON. STEVE SYMMS, U.S. SENATOR FROM THE STATE OF IDAHO

Senator SYMMS. Thank you, Mr. Chairman.

Welcome to the committee this morning, Jim.

I must note that I have mixed feelings about Jim Curtiss' nomination to the Nuclear Regulatory Commission. On one hand, I have to acknowledge the wisdom of this appointment. Jim has been Associate Counsel for this subcommittee since 1981, and he has been directly involved and partially responsible for the nuclear-related legislation that has come before Congress during that time. If ever there was anyone who could help the Commission understand the nuances and subtleties of these laws and regulations, Jim is certainly the one. Jim has also been concerned in oversight of the NRC for all these years. I believe he has developed an excellent understanding of what should be done in the area of assuring the public safety, as well as having an awareness of what, in reality, can be done. Jim will be an articulate and positive spokesman for the Commission, I am sure.

On the other hand, however, I am somewhat hesitant to wholeheartedly support this appointment. I'm not sure how the committee will function without Jim. He has worked many long, hard hours on a number of controversial issues, and when the rhetoric got hot and heavy, Jim has been there to take the heat. Jim Curtiss has served his Chairman and Ranking Member, Senator Simpson, faithfully and well. But more than that, he has done just as good a job for the rest of us on the committee. Jim has been most informative and helpful to me and my staff many times, on many issues. I hate to see him go.

But I know he will do the same excellent job at the Commission. Jim has the ability to dig deep into an issue, the resiliancy to stick to a well thought out decision, and the integrity to speak up for what he believes.

I don't have any questions for Jim Curtiss. I simply want to wish him all the best in his new position.

Thank you, Mr. Chairman.

Senator BURDICK. The Senator from Nevada?

OPENING STATEMENT OF HON. HARRY REID, U.S. SENATOR FROM THE STATE OF NEVADA

Senator REID. Thank you, Mr. Chairman.

I have a statement that I would ask your permission and that of the committee to be made a part of the record. Would that be possible?

Senator BURDICK. Without objection.

Senator REID. I just want to say, Mr. Chairman, that I too am happy to welcome Mr. Curtiss before the committee. I certainly wish him well in his service as a Commissioner of the NRC.

I think that, as indicated by the statements that have been made by members of this committee today, we approach your nomination on a bipartisan basis as we know that you will approach your assignment as a member of the Commission. This is, as far as I am concerned, one of the most responsible jobs in Government and I know that you will do your best to make sure that you represent the confidence that the committee has placed in you.

[Senator Reid's statement follows:]

OPENING STATEMENT OF HON. HARRY REID, U.S. SENATOR FROM THE STATE OF NEVADA

Mr. Chairman and Members of the Committee, I am pleased to join you today to consider the nomination of James Curtiss to serve for five years as a Commissioner of the Nuclear Regulatory Commission. Mr. Curtiss has been nominated to fill the position held by NRC Commissioner Frederick Bernthal. Commissioner Bernthal's term expired on June 30.

Jim is no stranger to the Environment and Public Works Committee, having served—and served well—the Committee members since 1981. I understand Jim has also had some inside experience with the NRC, where he worked as an attorney for the regulations division of the agency following his graduation from law school in 1979. These experiences will certainly serve Mr. Curtiss well in his capacity as Commissioner of the NRC.

Mr. Curtiss has been introduced by Subcommittee Chairman John Breaux and Senator Alan Simpson, Ranking Minority Member of the Nuclear Regulation Subcommittee, a gesture which reflects the bipartisan nature of this nomination. This is particularly reassuring at this point in time. We are at a crossroads with respect to many issues relating to the nuclear option in this country. The need exists to restore public confidence in the nuclear power industry, with particular attention focused on the maintenance and safe operation of existing power plants. Environmental concerns also require us to seriously assess the role of nuclear power for the future. Now more than ever, the Nuclear Regulatory Commission must have the expertise and ability to rise to the many challenges before it.

Mr. Chairman, in the coming months the NRC will focus on safety and fitness for duty questions, as well as public participation in NRC proceedings. Of particular concern to me is the NRC's role in licensing the high-level nuclear waste repository and new power plants. As a Commissioner, Mr. Curtiss will be intimately involved in these activities. He will also be called upon to consider how to improve the agency's efficiency and accountability. I look forward to having Mr. Curtiss' thoughts on the many challenges facing the NRC. Thank you.

Senator BURDICK. Senator Durenberger.

OPENING STATEMENT OF HON. DAVE DURENBERGER, U.S. SENATOR FROM THE STATE OF MINNESOTA

Senator DURENBERGER. Mr. Chairman, I would just endorse all the kind comments that have been made of Mr. Curtiss, and say that he is tough and he is smart. We have not agreed on everything. I respect him for that.

I guess the only other thing I would say is that he is probably the only exception on this staff to Senator Simpson's normal characterizations of the staff, but I think that's not true either. I think we have a terrific staff on this committee, and the fact that we see them in other roles is a compliment to the leadership of this committee: its current Chair, its former Chair, and all the other people who have responsibility for making decisions about staff for the committee, and the fact that we can see them sitting where Mr. Curtiss is today is a compliment not only to them, but to my col-

leagues on this committee. I'm sure Mr. Curtiss would agree with all of that.

Senator BURDICK. Senator Stafford.

OPENING STATEMENT OF HON. ROBERT T. STAFFORD, U.S. SENATOR FROM THE STATE OF VERMONT

Senator STAFFORD. Thank you, Mr. Chairman. I do have a brief statement here; rather than put it in the record, I think I will deliver it.

Jim has been a member of the staff of this committee since 1981. He was majority counsel for the Nuclear Regulation Subcommittee under Senator Simpson's chairmanship from 1982 to 1987, and has served ably since them as the subcommittee's minority counsel.

I am delighted to support Jim's nomination to the Nuclear Regulatory Commission. I know Jim to be a thorough and diligent professional with impressive knowledge of nuclear regulatory matters. He has advised committee members on a variety of technically and politically difficult issues, including disposal of high- and low-level nuclear waste, schemes to compensate victims of nuclear utility accidents, and procedures to assure safer production of nuclear power.

He has been unstinting in his commitment to his work for this committee. I would expect the same level of commitment if he is confirmed as an NRC Commissioner. I should note that it is especially interesting to see Jim as a nominee to the current five-member Commission. I say this because for several years Jim has energetically promoted Senator Simpson's—and more recently also, Senator Breaux's—efforts to replace the Commission with a single Administrator.

You may have done too well, Jim.

I expect to ask the nominee later for his thoughts on any possible conflict that may arise from this situation, and I look forward to hearing from Jim and I hope for affirmative action on Jim's nomination by the committee and the Senate.

Thank you, Mr. Chairman.

Senator BURDICK. Mr. Curtiss, do you know of any matters that you have not already disclosed that might create a conflict of interest if you are confirmed to this position?

Mr. CURTISS. No, Mr. Chairman.

Senator BURDICK. Are you prepared to appear before any committee of Congress at the request of that committee?

Mr. CURTISS. Yes, I am, Mr. Chairman.

Senator BURDICK. Do you believe that the current Commission structure is capable of adequately protecting public health and safety?

Mr. CURTISS. I do, Senator. There are certain advantages to the Commission structure and certain advantages to the single Administrator approach as well, but based upon my experience with that agency and my knowledge of the operations of the agency I do think the Commission structure is capable of carrying out the mandate today with which Congress has charged it.

Senator BURDICK. In your opinion, has the Commission maintained a proper arm's length, independent regulatory relationship

with the persons it is charged with regulating? Or is it too cozy with such persons?

Mr. CURTISS. I think the Commission has an obligation to ensure that its relationship with the industry that it regulates is a professional one and one that is conducted in arm's length fashion, and if I am confirmed the actions that I take and the positions and issues that I am involved with will seek to ensure that.

Senator BURDICK. Are there any other questions? Senator Moynihan?

Senator MOYNIHAN. Mr. Chairman, as I indicated earlier, I have the greatest respect for Mr. Curtiss in his professional capacity and am very proud of this appointment. On the other hand, he and I do have differences which at the staff level are one thing and which as a member of the Commission would be another.

On this elemental question—I think it is elemental—do we have to ensure that State and local governments will participate in evacuation plans that are required for licensing of nuclear plants? Some think yes and others think no. I most emphatically think yes. I don't want to press Mr. Curtiss at this point to give an answer straight out, but the issue was raised in my bill, S. 40, which was introduced on the first day of this Congress, the Atomic Safety Act, and we have not thought it wise to pass S. 40, but I still think it is a reasonable approach.

In any event, Mr. Chairman, I have seven questions which I would like to submit to Mr. Curtiss with great respect, and I really would have to ask that they be answered in writing. I would like to feel that we could have a hearing, a meeting of the committee, to consider those questions when the answers have been returned, as indeed they will be. So I will submit those questions to Mr. Curtiss and thank him with an anticipatory thank you for his courtesy in response. (See p. 32.)

Mr. CURTISS. Thank you, Senator.

Senator BURDICK. Senator Breaux?

Senator BREAUX. Thank you, Mr. Chairman. I would like to ask the nominee a couple of questions based on a letter that I think we all got from Congressman Hochbrueckner, and based on a press release signed by Congressman Mrazek and Congressman Downey. I know Congressman Tom Downey very well and have a great deal of respect for him, having served with Tom in the House for a number of years.

But one of the statements in the letter that we have all received I really think is unsupported and unnecessary, and certainly incorrect, in the sense that they say "James Curtiss has been the architect of legislative maneuvers aimed at defeating efforts to improve public safety and nuclear industry accountability."

I think the record should clearly show that the opposite is certainly true. This nominee's efforts in the Price- Anderson bill, this nominee's efforts in the legislative endeavors to set up a nuclear waste repository that ensured the safety of the American public, and this nominee's efforts in working towards getting a single Administrator for the NRC—which the industry strongly opposed and still continues to fight today—spell out a record totally contrary to the information contained in this letter from the three Members from the House side. I certainly respect their position and their

ability to defend the interests of their constituents, but the record should not allow a statement that we have received as members of this committee to go unanswered. It is certainly not reflective of the facts. I think this committee, which must rule on the nomination initially, knows the record as being far different from that.

I would like to ask the nominee, does he have a position on the Shoreham situation?

Mr. CURTISS. Senator, I don't have a view on the issues that are currently before the Commission for decision. The issues are complicated. They have arisen in a case where they are really matters of first impression; nor, given the adjudicatory nature of the process at the Commission and the Commission's responsibility as an arbiter in the agency adjudicatory proceeding do I think it would be appropriate for me to have a view on the contested issues in that proceeding.

Senator BREAUX. I think that's an appropriate answer with regard to your potential of serving on the Commission, but your record in service to this Congress and in particular to this committee has called into question, I imagine, the discussions on Shoreham that you have had with members of this committee. What has been your position on the issue as a professional staff person, not as a potential nominee to the Commission?

Mr. CURTISS. Senator, in my capacity as a staff member for the committee I have become involved in that capacity in a number of the policy issues that have arisen in the general area of emergency planning. As a matter of pride in my participation or involvement in many specific proceedings, I have sought, in that context, to ensure that the contested issues before the Commission are decided, as they should be, by the Commission without undue influence from the outside.

Having said that, the Congress in 1980 did fashion a comprehensive emergency planning framework that has been the subject of committee oversight hearings and inquiries over the course of the past seven or eight years, focusing on the workability of that approach and the agencies' respective roles—FEMA and the Commission—in implementing that framework. In that capacity I have been involved in the policy issues, advising Senator Simpson most directly and others, as to the options and facts and situation.

Senator BREAUX. As a person who is familiar with the legislation that has now passed the Senate and is pending in the other body with regard to the single Administrator for the NRC, with regard to accountability of the NRC vis-a-vis the industry that it must regulate, what is your viewpoint of that legislation? Does it call for greater accountability? Does it change it very much, or less?

Mr. CURTISS. It seems to me that one of the advantages of the single Administrator approach is that it does in fact enhance the accountability and responsibility of the individual charged with running the agency. A single person, as is the case with EPA, is responsible for the actions taken or not taken by the agency and accountable for those decisions.

Having said that, the Congress—at least to date—has spoken on the framework that it supports for this agency. It is a collegial, five-member Commission body, and I think if confirmed as a Com-

missioner I would seek to do everything I can to try to realize the benefits of that structure, given that that is the law today.

Senator BREAUX. Thank you, Mr. Chairman.

Senator BURDICK. Senator Symms?

Senator SYMMS. No questions, Mr. Chairman.

Senator BURDICK. Senator Stafford?

Senator STAFFORD. Well, thank you, Mr. Chairman. I have just one question to ask at this point, and one that I will put in the record for answer in writing.

Senator STAFFORD. In my opening statement I noted your role, Jim, in promoting NRC reform legislation, the so-called single Administrator bill. Have you considered what steps, if any, you should take with respect to your continued work on that bill during the pendency of your nomination?

Mr. CURTISS. Senator Stafford, it is unclear at this point whether there will be any further legislative action on the NRC reform initiative this year, and if so, in what context and on what issues. The Senate passed the legislation on August 8th and subsequently appointed conferees and requested a conference with the House. The legislation is now pending in the House, where the chairmen of the two committees of jurisdiction—the House Interior and Insular Affairs Committee, and the House Energy and Commerce Committee—have asked the Speaker of the House to refer the bill to committee rather than agree to the Senate's request for a conference.

In view of this it may very well be that there will be no further action on this bill in the time remaining in this Congress. If, however, it appears that further action on this legislation is a possibility in the time remaining in this session, it would by my intention at th time, should my nomination be pending, to consult with you as well as Senators Burdick, Simpson, and Breaux, about the propriety of my involvement as a staffer in any part of the legislation that, under the Senate rules, might pose a conflict of interest, and particularly to ensure that I not be involved in any part of this legislation that would further my pecuniary interest.

If that is satisfactory to the committee that is what I would propose to do, Senator.

Senator STAFFORD. Thank you very much.

Thank you, Mr. Chairman. My other question I will submit for answer in writing.

Mr. CURTISS. Thank you, Senator.

Senator BURDICK. Senator Reid?

Senator REID. Thank you, Mr. Chairman.

Mr. Curtiss, what do you envision to be the most important challenges facing the NRC today?

Mr. CURTISS. Senator, I think the principal policy challenges and regulatory responsibilities that will confront this agency are essentially threefold.

First and foremost, we do have 110 nuclear plants operating today, and that ought to be the Commission's foremost responsibility. It's where the Commission in the recent past has devoted the bulk of its resources, and with the significance of the issues that come up in that context, that ought to be the focus of the Commission's principal responsibility.

Second, as I indicated in my opening statement, there is increasing attention to the so-called "back end" of the fuel cycle issues. The nuclear waste disposal issue in particular is becoming increasingly important. We are seeing, as nuclear materials begin to be transported around the country, increasing public interest in that aspect. The Commission has a unique role to play in this area, to ensure that the programs carried out by the Federal Government and by the Department of Energy in particular for high-level waste disposal, and by the compact regions in the area of low-level waste disposal, are conducted in a safe manner, that the decisions made are timely and well-explained, and that that program moves forward in a successful manner.

Senator REID. One final question. What steps do you believe that the NRC can take to ensure that the licensing process of the proposed high-level nuclear waste repository is credible?

Mr. CURTISS. Senator, I think the Commission in the context of the Waste Policy Act of 1982 has an opportunity—in fact, one could envision that Congress directed them to become involved early in the licensing process for the waste repository for the purpose, one, of ensuring that technical issues that arise in that program are identified early; and two, that the information gathered at the site under consideration is considered objectively and that technical problems are resolved as early and as fairly as possible, given the technical information. I think that's an essential role for the Commission.

Senator REID. Thank you, Mr. Chairman.

Senator MOYNIHAN. Mr. Chairman.

Senator BURDICK. Senator Moynihan.

Senator MOYNIHAN. Could I just take the opportunity to express my appreciation for Mr. Curtiss raising this issue of the "back end" aspect of nuclear production? It is perfectly understandable that you first think of the benefits, and then the costs come a little bit later down the line.

In 1980, President Carter did sign our legislation, passed out of this committee, that created the first nuclear waste management program in the country, the only one, at West Valley, New York, which is a glassification measure. I have never heard a word from the NRC of an awareness that the program was going on, that it mattered, that it might make a difference, and I think it's something you should be very much interested in. I try to keep abreast of it. I think they're doing pretty well. I think they're about on schedule. Is that your understanding?

Mr. CURTISS. Senator, I'm not familiar with all the details of that. The legislation itself was enacted before I came to the committee. I am generally aware of the Commission's role in that area. I do think it is an important program. It is obviously one of the programs that is on the cutting edge in the area of nuclear waste disposal——

Senator MOYNIHAN. Either we're going to learn glassification, or—or what?

Mr. CURTISS. Yes, sir. It seems to me that's a valuable pilot program, with the Commission's role there, that is going to focus on a number of the key technical questions. I do think the Commission has an important role to play there.

89-433 O - 88 - 2

Senator MOYNIHAN. I would simply make the point to you, sir, that I am glad to here that because you would not know it from eight years of encounters with the Commission in which the subject never has arisen. But I thank you.

Mr. CURTISS. Thank you.

Senator BURDICK. The Senator from Montana?

Senator BAUCUS. No questions.

Senator BURDICK. Any further questions?

[No response.]

Senator BURDICK. If not, Mr. Curtiss, in closing I would like to thank you for appearing before the committee. I hope that you will continue to make yourself available to the committee members. I also have some written questions for the record.

Mr. CURTISS. Thank you, Mr. Chairman.

Senator BURDICK. The committee is now adjourned.

[Whereupon, at 10:48 a.m., the committee was adjourned, to reconvene at the call of the Chair.]

[Responses to a committee questionnaire and additional questions follow:]

UNITED STATES SENATE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

Name: Curtiss (Last) James (First) Richard (Middle)

Position to which nominated: Commissioner, Nuclear Regulatory Comm'n. **Date of Nomination:** August 11, 1988

Date of birth: Dec. 20, 1953 (Day) (Month) (Year) **Place of birth:** Lincoln, Nebraska

Marital status: Married **Full name of spouse:** Gayle Libby Curtiss

Name and ages of children: Alexandra Libby Curtiss Born: January 1, 1988

Education:

Institution	Dates attended	Degrees received	Dates of degrees
Univ. of Nebraska-Lincoln	1972-1976	B.A.	1976
Univ. of Nebraska-Lincoln	1976-1979	J.D.	1979

Employment record: List all positions held since college, including the title and description of job, name of employer, location, and dates. If you were terminated involuntarily from any position(s), please note the circumstances.

Attorney, Regulations Division, U.S. Nuclear Regulatory Comm'n. 1979-1981

Associate Counsel, Committee on Environment & Public Works, U.S. Senate Washington, D.C. 1981-present

Employment record—Continued

Honors and awards: List significant scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

Assistant Editor, Nebraska Law Review

Memberships: List significant memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations.

Organization	Office held (if any)	Dates
District of Columbia Bar	none	1985 to present
Nebr. State Bar Association	none	1979 to present

Qualifications: State fully your qualifications to serve in the position to which you have been named.

Nine years of professional experience in the area of civilian nuclear regulation, including over 7 years as Associate Counsel for the Subcommittee on Nuclear Regulation of the Committee on Environment and Public Works and, prior to that, 1½ years as an attorney at the Nuclear Regulatory Commission.

Future employment relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

Yes

2. As far as can be foreseen, state whether you have any plans after completing government service to resume employment, affiliation or practice with your current or any previous employer, business firm, association or organization.

I currently have no such plans.

3. Has anybody made a commitment to you for a job after you leave government?

No

4. (a) If you have been appointed for a fixed term, do you expect to serve the full term?

Yes

(b) If you have been appointed for an indefinite term, do you have any known limitations on your willingness or ability to serve for the foreseeable future?

Not applicable

(c) If you have previously held any Schedule C or other appointive position in the Executive branch, irrespective of whether the position required Congressional confirmation, please state the circumstances of your departure and its timing.

I have never held any such position.

Financial Statement:

1. Attach a copy of your Executive Personnel Financial Disclosure Report (SF 278).

2. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services and firm memberships or from former employers, clients, and customers. Amounts should be indicated by the categories established for reporting income on Form SF 278, Schedule A.

None

3. Are any assets pledged? (Add schedule).

No

4. Are you currently a party to any legal action?

No

5. Have you filed a Federal income tax return for each of the last 10 years? If not, please explain the circumstances.

Yes

6. Has the Internal Revenue Service ever audited your Federal tax return? If so, what resulted from the audit?

No

Potential conflicts of interest:

1. Describe any financial or deferred compensation agreements or other continuing dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

None

2. List any investments, obligations, liabilities, or other relationships which might involve potential conflicts of interest, or the appearance of conflicts of interest, with the position to which you have been nominated.

None

3. Describe any business relationship, dealing or financial transaction (other than taxpaying) which you have had during the last 10 years with the Federal Government, whether for yourself or relatives, on behalf of a client, or acting as an agent, that might in any way constitute or result in a possible conflict of interest, or an appearance of conflict of interest, with the position to which you have been nominated.

None

4. Explain how you will resolve any potential conflict of interest, or appearance of a conflict of interest, that may be disclosed by your responses to the above items.

Not applicable

5. Explain how you will comply with conflict of interest laws and regulations applicable to the position for which you have been nominated. Attach a statement from the appropriate agency official indicating what those laws and regulations are and how you will comply with them. For this purpose, you may utilize a statement by the relevant agency Ethics Officer.

See attached statement from agency Ethics Officer.

Political affiliation and activities: List all memberships and offices held in, or financial contributions (in excess of $1,000), and services rendered to any political party or election committee during the last 10 years.

None

Published writings: List the titles, publishers and dates of any books, articles, or reports you have written. (Please list first any publications and/or speeches that involve environmental or related matters.)

Note, The Clean Water Act of 1977: Midcourse Corrections in the Section 404 Program, 57 Neb. L. Rev. 1091 (1978)

Additional Matters:

1. If there is any additional information which you believe may be pertinent to the Members of the Committee in reaching their decisions, you may include that here.

None

2. Do you agree to appear before all Congressional Committees which seek your testimony?

Yes

3. Having completed this form, are there any additional questions which you believe the Committee should ask of future nominees?

No

AFFIDAVIT

James R. Curtiss) ss, being duly sworn, hereby states that he/she has read and signed the foregoing Statement for Completion by Presidential Nominees including the Financial Statement and that the information provided therein is, to the best of his/her knowledge and belief, current, accurate, and complete.

James R. Curtiss

Subscribed and sworn before me this 22nd day of August, 1991.

Notary Public

MY COMMISSION EXPIRES: MAY 14, 1993

RESPONSES TO POST-HEARING QUESTIONS
SUBMITTED BY JAMES R. CURTISS
SEPTEMBER 16, 1988

QUESTIONS FROM SENATOR QUENTIN N. BURDICK

Question 1. One of the arguments in support of the proposal to replace the Commission with an agency that is headed by a single administrator is that there is in fact very little collegiality at the Commission. Increasingly, the Commission conducts its business by notation and negative consent voting.

(a) In your opinion, is there room for improvement in the collegial decisionmaking process of the Commission?

Answer: Based upon what I currently know about the Commission's decisionmaking process, it appears to me that there might well be opportunities available that would more fully achieve the benefits of the collegial decisionmaking process. My knowledge of the Commission's decisionmaking process is limited, though, and for this reason, I would need to examine the process more carefully, if confirmed, before reaching a final judgment on how this process might best be improved.

(b) What steps would you undertake to improve the collegial decisionmaking process at the Commission?

Answer: As a general rule, the benefits of any collegial decisionmaking process are more fully realized, in my view, where the participants in that process -- here, the five Commission members -- are able to get together in a face-to-face manner to deliberate about the formulation of policy, to exchange views, and to engage in the give-and-take that goes into collegial decisionmaking. In this regard, one particular aspect of the existing process that I think needs to be examined is the increasing reliance on notation voting and the COMSECY process for the resolution of policy issues. I have addressed this issue more extensively in response to question 2(c). Beyond this, I would need to examine the process more carefully, if confirmed, before reaching a final judgment on how this process might best be improved.

Question 2. Another concern identified by the Committee relates to public decisionmaking at the NRC. The Committee's investigation into the decisionmaking process at the Commission found that the number of Commission Meeting Papers, for which a public meeting to discuss major issues was anticipated, declined from 43 in 1981 to zero in 1987.

(a) Do you support the provisions and principles of the Government in the Sunshine Act as it applies to the NRC?

Answer: Yes.

(b) Do you believe that in instances in which the Sunshine Act requires an open meeting that you would have difficulty or feel inhibited in participating in the meeting?

Answer: No.

(c) Should the Commission conduct more of its business in open meeting and less through notation voting and negative consent items?

Answer: In my view, the principal disadvantage of notation voting, as well as the use of the COMSECY process, for the resolution of policy issues is that these procedures inhibit the ability of the Commission to achieve one of the principal benefits of a collegial, deliberative decisionmaking process -- the opportunity for all five Commissioners, in a face-to-face manner, to get together and deliberate over the formulation of agency policy. That is not to say that all policy issues are best resolved in this manner. Nor does it mean that one-on-one discussions or the circulation of written views by individual Commissioners are ineffective means of communicating the positions and views of those individual Commissioners to one another. But the use of notation voting and the COMSECY process both have the potential to be time-consuming and inefficient. In addition, as I discussed above, notation voting and the COMSECY process seem to inhibit the full realization of the benefits of a collegial system. As a general rule, therefore, I believe that less rather than more reliance on notation voting and the COMSECY process for the

resolution of policy issues would enhance the collegial decisionmaking process and contribute to achieving what many see as one of the major benefits of the commission format. With regard to negative consent voting, it is my understanding that this procedure is employed where the Commission staff is proposing to take a relatively minor action. For this reason, negative consent actions do not in my view raise the same fundamental questions about the operation and effectiveness of the collegial system. I would also note that the Commission does not appear to be increasing its reliance on negative consent papers. In fact, the number of negative consent papers has actually declined from 1983 to 1987, from a high of 125 in 1983 to 35 in 1987. With respect to the issue of the openness of the Commission process, it is my view that the Commission's decisionmaking process should be open and accessible to interested members of the general public. The American public has -- and will continue to have -- a great interest in the regulation of nuclear power. Accordingly, I believe that public confidence in the agency as an institution and in the regulatory actions taken by the agency will generally be enhanced by an open and accessible process.

(d) What steps would you take to encourage more public decisionmaking at the Commission?

Answer: I believe that the Commission should seek to ensure, in a manner consistent with the provisions and principles of the Government in the Sunshine Act, that its decisionmaking process is conducted in an open and accessible manner. In particular, I believe that wherever possible, the resolution of major policy issues should be undertaken in a public forum, rather than through notation voting or the COMSECY process.

Question 3. The Committee's investigation also revealed several instances in which information was provided selectively to persons outside the NRC, and, in some cases, subsequently denied to the public when within the scope of a Freedom of Information Act request.

(a) Are you committed to ensuring that information is provided to persons outside the agency on an equal basis?

Answer: Yes. Where the Commission makes documents available to one or more members of the general public, it should, in my view, endeavor to ensure that such documents are made available to all members of the general public who might have an interest in such documents.

(b) Do you have any suggestions as to how the Commission can better assure that this is accomplished?

Answer: I have only a limited familiarity with the policies of the Commission governing distribution of documents. Nor am I familiar with the document control procedures that have been established by the Commission to ensure that these policies are achieved. It does seem to me, though, that one option that might warrant consideration is to ensure that documents released to one or more members of the general public also be placed in the Commission's Public Document Room.

(c) Considering the agency's other statutory responsibilities, what priority should the agency place upon compliance with the FOIA?

Answer: The Commission should place a high priority on complying with all applicable statutory requirements, including the requirements of the Freedom of Information Act. Regardless of the particular statute involved, the Commission's efforts to comply with any statutory obligation should be the same.

Question 4. Please provide your general views as to the value of public participation in adjudicatory and rulemaking actions. Do you believe such participation provides benefits to the regulatory process?

Answer: I believe that public participation in the Commission's adjudicatory and rulemaking actions contributes to the quality of the decisions rendered by the Commission and serves to enhance the public's confidence in the actions taken by the agency. For that reason, I believe that the Commission should continue to strive to provide effective opportunities for interested members of the public to participate in the decisions rendered by the Commission.

(a) With respect to agency adjudications, please provide your views as to the current degree of public participation. Is there too much, too little, or just the right amount of opportunity to participate for the public? Are the agency's procedures too formalized?

Answer: As a general observation, I think that agency adjudicatory proceedings have provided a valuable opportunity for interested members of the public to participate in agency decisionmaking. Based upon my current limited knowledge of individual adjudicatory proceedings, though, it is difficult for me to say whether the opportunity for the public to participate in adjudicatory proceedings is too much, too little, or just about right. Beyond the degree of public participation, though, it seems to me that there are steps that can be taken to enhance the effectiveness of public participation. For example, the opportunity for the public to participate in licensing proceedings for nuclear power plants is often exercised late in the process, at the operating license stage, when the design information for a given plant is complete and construction is essentially finished. Many have observed that, at that stage, there is considerable institutional inertia to be overcome for the public to have an effective voice in the resolution of disputes. In my view, the public would have a much more effective and meaningful opportunity to participate in the agency's decisionmaking process, in a manner that would enhance the value of public participation, if utilities were required to submit essentially complete facility designs at the outset of the licensing process and if the Commission were authorized to consider applications for early site permits. Each of these steps would contribute to early and more effective public participation.

(b) With respect to the development of policy statements, the Subcommittee on Nuclear Regulation concluded as follows:

> Generally, in the three major areas examined by the Subcommittee, the opportunity for the public to participate in the development of policy statements and the specific programs established pursuant to these policy statements has been more limited than what would have been available had regulations been established, following an opportunity for notice and

comment by the public. Accordingly, the Subcommittee is of the view that the Commission should endeavor to ensure that its deliberations with representatives of industry organizations on the development of policy statements are a matter of public record and that interested members of the public have an opportunity to participate in such deliberations.

Do you support this recommendation?

Answer: Yes.

Question 5. Do you support the issuance of enforceable regulations rather than policy statements in the areas of (a) fitness for duty, and (b) maintenance?

Answer: It is my understanding that the Commission is currently considering the adoption of regulations addressing each of these two subjects. Before I reach a final decision on either of these initiatives, I would intend to review the rulemaking record in each case to ensure that I have fully considered all of the various issues involved. As a general matter, I agree with the criteria set forth in Appendix 4 of the Report of the Committee on Environment and Public Works accompanying S.2443 (S. Rpt. 100-364), setting forth the principal factors that should be considered in deciding whether a regulation or a policy statement is appropriate in any given area. Based upon those criteria, and with my current understanding of these two issues, it appears that the Commission's tentative intention to proceed with the issuance of regulations in each of these two areas is warranted.

Question 6. Do you support the creation of a statutory Office of Investigations as provided in S. 2443, as passed by the Senate on August 8, 1988?

Answer: Yes.

Question 7. Do you support the replacement of the 5-member commission with a single administrator?

Answer: In my view, the single administrator format provides certain benefits that, given the evolution in the responsibilities of the NRC and the challenges that will be facing this agency in the foreseeable future, outweigh the advantages to be gained from the commission format. At the same time, though, the law today vests the five-member Nuclear Regulatory Commission with the responsibility for regulating the use of nuclear materials and facilities in order to ensure that the public health and safety and the environment is protected. In view of that, it seems to me that the challenge for any individual Commissioner is to ensure that the existing regulatory structure is made to function as effectively and efficiently as possible and that the benefits that Congress sought to achieve in establishing this framework are realized to the fullest extent possible.

Question 8. Do you believe the Yucca Mountain site is suitable for a repository for high-level nuclear waste? What should be the NRC's role during the site characterization phase of the high-level waste program?

Answer: I have no views on the suitability of the Yucca Mountain site to serve as a repository for high-level nuclear waste. The NRC is charged by statute with considering and ruling upon any application submitted by the Department of Energy for a construction authorization for a nuclear waste repository, and this is the appropriate forum in which to determine the suitability of this or any other site that is the subject of such an application. During the site characterization phase that precedes submission of such an application, the Commission has certain defined statutory responsibilities, set forth in large part in section 113 of the Nuclear Waste Policy Act, as amended. In general, it appears to me that the Congress envisioned that the Commission, consistent with its obligation to render an independent decision on any application submitted by the Department of Energy for a construction authorization, would play an active role throughout the site characterization process to ensure that issues with respect to the suitability of any site under consideration for a repository are identified and resolved as early as possible.

Question 9. What should be the NRC's role in the development of new reactor technologies? Should the NRC encourage the development of these technologies?

Answer: The NRC has a responsibility to ensure that any new reactor technologies that are developed for commercial use are safe. In this regard, it seems to me that as the country looks to possible future generations of nuclear power plants, the NRC has an opportunity to ensure that the regulatory program for any such future plant is clearly articulated -- and, to the extent possible, to do so in advance of any future application. Positive steps have already been taken by the Commission to begin to define the procedures for consideration and approval of standardized nuclear power plant designs. In this context, together with other related regulatory initiatives, the agency has an unusual opportunity to address the various questions that might arise for the next generation of nuclear plants in a prospective manner, and thereby avoid many of the difficulties and uncertainties that we have faced in the past. The NRC should not, however, be responsible for promoting the development of new reactor technologies.

Question 10. To what extent has the regulatory process or the structure of the NRC contributed to the absence of new orders for nuclear power plants and the cancellation of many plants under construction over the past 10-15 years? Are any changes in these areas necessary before any new reactors will be ordered?

Answer: There are a variety of factors, including but not limited to the regulatory process and structure of the NRC, that have contributed to the cancellation of nuclear power plants over the past 10-15 years. It would be an oversimplification in my judgment to say that any single factor was responsible for those cancellations, or that any single change is necessary and sufficient before any new reactor is ordered. Moreover, regardless of what factors contributed in what degree to these decisions, I believe that it makes sense to focus today on improving the regulatory process and structure of the NRC for both existing and future plants. As a general matter, I believe that the changes contained in S. 2443, as passed by the Senate, would improve the regulatory process for

both existing and future plants. In addition, I have addressed the steps that I think should be taken with respect to possible future plant applications in response to Question 9.

Question 11. The Commission's role is evolving from that of a licensing agency to an agency overseeing the safe operation of licensed plants. What do you perceive as the major challenges facing the Commission as its mission shifts in this manner?

Answer: It seems to me that there are a number of challenges that will face the agency over the next few years, as it strives to fulfill its sole statutory mandate -- to ensure that the use of nuclear materials and facilities is undertaken in a manner that protects the public health and safety and the environment.

As a general observation, it is essential in my view that the agency strive to engender a high degree of public confidence in the agency as an institution and in the regulatory actions taken by the agency. The American public has -- and will continue to have -- a great interest in the regulation of nuclear power, whether it be in the communities surrounding nuclear power plants, in the States through which nuclear materials are transported, or as a result of any of the numerous other activities that the NRC regulates. And in view of this, it is especially important that the agency seek to ensure that its decisionmaking process is conducted in an open and accessible manner and that the decisions rendered by the agency are based upon sound technical information.

Beyond this, there are three specific areas where, in my judgment, the agency will face important challenges over the next several years. First and foremost, we now have approximately 110 operating nuclear power plants, generating roughly 16 percent of this nation's electricity. In my view, the oversight and regulation of these 110 plants should continue to be the agency's top priority. In particular, there are a number of issues that will become increasingly important as the nuclear industry continues to mature -- including maintenance, plant aging, and human factors issues.

Second, the agency is devoting increasing attention to a wide range of issues regarding the so-called "back end" of the fuel cycle -- including, most prominently, the disposal of high- and low-level nuclear waste. With increasing attention focusing on the issue of nuclear waste disposal -- and with the quantities of both high- and low-level nuclear waste accumulating daily -- the Commission's role in this area is becoming increasingly important, and I anticipate that this area, in particular, is one where the Commission will be spending a greater share of its time and resources.

Third and finally, as the country looks to possible future generations of nuclear power plants, the agency has an opportunity to ensure that the regulatory program for any such future plant is clearly articulated -- and, to the extent possible, to do so in advance of any future application. Positive steps have already been taken by the Commission to begin to define the procedures for consideration and approval of standardized nuclear power plant designs. In this context, together with other related regulatory initiatives, the agency has an unusual opportunity to address the various questions that might arise for the next generation of nuclear plants in a prospective manner, and thereby avoid many of the difficulties and uncertainties that we have faced in the past.

Question 12. Have you reached any conclusions regarding whether the NRC should issue an operating license for (a) the Shoreham Nuclear Power Plant, or (b) the Seabrook Nuclear Station?

Answer: No.

QUESTION FROM SENATOR ROBERT T. STAFFORD

Question 1. In your statement you expressed your preference for full public access to Commission decisions. If you believe that Commission business is best conducted in public view, what would you, as a Commissioner, be willing to do to assure that maximum public scrutiny is

afforded? That is, would you be willing to make public your disagreement with other Commissioners if they were to insist on making decisions in a less than public manner?

Answer: In my view, the Commission's decisionmaking process should be open and accessible to interested members of the general public and, accordingly, the Commission should seek to ensure that the manner in which it reaches decisions affords an opportunity for interested members of the public to observe and participate in the decisionmaking process. As a general rule, I believe that less rather than more reliance on notation voting and the COMSECY process will contribute to achieving this objective, while, at the same time, enhancing the collegial decisionmaking process. I also believe that public confidence in the agency as an institution and in the decisions rendered by the agency will generally be enhanced if the public is afforded the opportunity to know and understand the views of individual Commissioners, regardless of whether all five Commissioners agree, and I would intend to ensure that that opportunity is available, both for the Congress and the public. At the same time, I believe that once the agency reaches a decision on a particular matter, the Commission is best served in the implementation of whatever that decision might be if it is unified and firm in carrying out the policy established by the Commission.

QUESTIONS FROM SENATOR DANIEL PATRICK MOYNIHAN

Question 1. Do you favor the licensing of the Shoreham Nuclear Power Station given the present status of emergency preparedness by LILCO, the State of New York and Suffolk County?

Answer: The decision on whether to issue a license for the Shoreham Nuclear Power Station is currently the subject of an adjudicatory proceeding before the Nuclear Regulatory Commission, where the issue of emergency preparedness is one of the contested issues. I do not have a view at this time on the contested issues currently pending before the NRC in this proceeding, nor do I think it would be appropriate for me to reach a decision with

respect to such issues until I have had an opportunity to review the information that will be presented on the record in that proceeding.

Question 2. Do you believe it is reasonable to expect that LILCO would be able to evacuate the Shoreham area in the event of a serious accident at the plant without the cooperation of State and County officials that have trained for such evacuation?

Answer: The adequacy of the emergency preparedness plan submitted by LILCO, including the ability to evacuate the area surrounding the Shoreham plant, is a matter currently being contested in an adjudicatory proceeding before the Nuclear Regulatory Commission. I do not have a view at this time on this issue, nor do I think it would be appropriate for me to reach a decision with respect to this issue until I have had an opportunity to review the information that will be presented on the record in that proceeding.

Question 3. Do you support the letter and the intent of the NRC's rule change regarding emergency planning?

Answer: I have not reviewed the complete rulemaking record associated with the recent change in the NRC's emergency planning regulations and, consequently, am not intimately familiar with all of the detailed background of this initiative. [I am assuming that the rule change referred to here is the one approved by the Commission on October 29, 1987 and that appears at 52 Fed. Reg. 52078.] Nevertheless, I am generally familiar with this initiative and have the following comments:

In 1980, when Congress enacted the statute setting forth the general framework for emergency planning at commercial nuclear power plants, Congress expressed a clear preference for States to be responsible for the development of emergency plans for commercial nuclear power plants. At the same time, though, Congress also specifically provided that:

> "In the absence of a State or local plan that complies with the guidelines or rules, [the NRC may]

issue an operating license if it determines that a State, local or utility plan, such as the emergency preparedness plan submitted by the applicant, provides reasonable assurance that the public health and safety is not endangered by operation of the facility." (H. Rpt. 96-1070, p. 27)

In view of this general legislative framework, it seems to me that the recently-adopted Commission rule is a reasonable effort on the Commission's part to comply with Congressional guidance regarding consideration of emergency plans submitted by a utility. In this regard, there are three points about the rule that I think are important:

(1) Any plan submitted by a utility must provide reasonable assurance that public health and safety is not endangered by operation of the facility concerned. In this regard, the utility must demonstrate that adequate protective measures can and will be taken in the event of an emergency.

(2) The general presumption contained in the rule that, in the event of an actual emergency, state and local officials will generally follow the utility plan is rebuttable in individual licensing proceedings.

(3) Finally, the Commission rule recognizes that it will clearly be more difficult for a utility to demonstrate to the NRC the adequacy of its plan in the absence of state and local participation.

Question 4. Do you believe that a 10-mile radius emergency planning zone is necessary? Do you believe that a smaller radius would be sufficient?

Answer: It is my understanding that the size of the present emergency planning zone was established by the Commission following an extensive evaluation of the best technical information available at the time and in consultation with experts in other federal agencies and elsewhere. In my view, the size of the emergency planning zone should be based upon the best available technical

information. I am not sufficiently familiar with the technical basis for the present emergency planning zone or the existing technical information, though, to have an informed opinion on exactly what the radius of this zone should be.

Question 5. Do you support the concept of emergency planning in general -- that it is absolutely necessary to ensure safe operation of nuclear power?

Answer: I support the concept of emergency planning for nuclear power plants. Extensive steps have been taken in an effort to minimize the likelihood of an accident ever occurring at nuclear power plants. There nevertheless exists a possibility, based upon what we know today, that an accident might occur and, accordingly, I believe emergency planning is a necessary and prudent component of our overall efforts to ensure the safe operation of nuclear power plants.

Question 6. Do you believe it would be possible for LILCO to fulfill its responsibility to safely evacuate the Shoreham area without the cooperation of State or County government?

Answer: The adequacy of the LILCO emergency preparedness plan is a matter currently being contested in an adjudicatory proceeding before the Nuclear Regulatory Commission. I do not have a view at this time on this issue, nor do I think it would be appropriate for me to reach a decision with respect to this issue until I have had an opportunity to review the information that will be presented on the record in that proceeding.

Question 7. Do you favor the adoption of S. 40? If not, why not?

Answer: In my view, the existing statutory authorities governing emergency preparedness at commercial nuclear power plants provide a workable and sufficient framework within which the two agencies principally responsible for this task, the Nuclear Regulatory Commission and the Federal Emergency Management Agency,

can most effectively carry out their respective responsibilites.

With regard to S. 40, my views are as follows:

1. I support the objective of ensuring that the NRC consult with the Federal Emergency Management Agency on the adequacy of offsite emergency preparedness at nuclear power plants. At the same time, however, I also believe that the Nuclear Regulatory Commission should continue to be the agency responsible for rendering the ultimate judgment on whether to issue a license for any commercial nuclear power plant.

2. As I understand section 4 of S. 40, the first part of this section simply provides that the NRC is not to issue a license for any nuclear power plant until FEMA has made a finding regarding whether the offsite emergency plan for such plant will provide assurance that the public health and safety can and will be protected in an emergency. With the following clarifications, I could support this aspect of S. 40: (1) A deadline should be imposed for the FEMA review process and for FEMA to submit its finding to the NRC; (2) If FEMA does not meet the deadline, the NRC licensing process should be allowed to go forward; (3) This provision should clearly state that the NRC is to render the ultimate judgment with respect to whether to issue a license for a nuclear power plant, regardless of whether FEMA submits a positive or a negative finding; (4) The standards and regulations with respect to the licensing of nuclear power plants should be established by the NRC; and (5) The standard for judicial review of NRC's final decision on the adequacy of emergency preparedness should be the same as the standard for review of any other technical issue addressed by the agency in issuing an operating license.

3. Finally, in view of the highly technical nature of the scientific basis for the present emergency planning requirements, and considering the potential for evolution in the state of knowledge about both emergency planning and reactor safety, I generally do not believe that the requirements that have been established by the NRC at any given point in time should be codified in a manner that would preclude the NRC from modifying these requirements to reflect the best available scientific information.

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